

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH CORSETTI,
a/k/a Laurence Stravaty,

Plaintiff,

vs.

MARK A. HACKEL, SGT. CAMPAU,
SGT. SCHULTZ, SGT. B. KUTELL,
DEPUTY MASAKOWSKI, DEPUTY
MAZZARELLI, DEPUTY METRY,
DEPUTY FURNO, JANE DOE,
VALERIE WATKINS, and JOHN DOE,

Defendants.

Case No. 10-12823

David M. Lawson
United States District Judge

Michael Hluchaniuk
United States Magistrate Judge

REPORT AND RECOMMENDATION
PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT (Dkt. 33)

Plaintiff filed this prisoner civil rights matter on July 16, 2010. (Dkt. 1).

One of the named defendants is defendant Mazzarelli. *Id.* District Judge David M. Lawson referred this matter to the undersigned for all pretrial proceedings. (Dkt. 16). Plaintiff applied for permission to proceed in this matter *in forma pauperis*, which was granted on July 19, 2010. (Dkt. 3). Service by the U.S. Marshal was ordered. (Dkt. 4). On March 30, 2011, the Marshal mailed a waiver of service of the summons and complaint to defendant Mazzarelli.

On March 18, 2011, plaintiff filed a motion for entry of default judgment as

to defendant Mazzarelli, claiming that the Attorney General's office should have "accepted" service on his behalf. (Dkt. 33). No default appears on the docket of this case. On April 19, 2011, a waiver of service was returned executed as to defendant Mazzarelli and his answer to the complaint is due June 13, 2011.

The undersigned **RECOMMENDS** that the Court **DENY** plaintiff's motion for entry of default judgment because no default was first entered by the clerk of the court as required by Rule 55. Wright, Miller & Kane, 10A Fed. Prac. & Proc. Civ.3d § 2682 ("Prior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a)."); *Hickman v. Burchett*, 2008 WL 926609, *1 (S.D. Ohio 2008) ("entry of default under Rule 55(a) must precede grant of a default judgment under Rule 55(b).") (internal quotation marks omitted, collecting cases).

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health*

and Human Servs., 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Any objections must be labeled as “Objection No. 1,” “Objection No. 2,” etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed.R.Civ.P. 72(b)(2), Local Rule 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as “Response to Objection No. 1,” “Response to Objection No. 2,” etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: May 2, 2011

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on May 2, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: James S. Meyerand, Brian J. Richtarcik, and Randall A. Juip, and I certify that I have mailed by United States Postal Service the paper to the following non-ECF participant(s) Joseph Corsetti, aka, Laurence Stravaty, ID# 140643, IONIA MAXIMUM CORRECTIONAL FACILITY, 1576 W. Bluewater Highway, Ionia, MI 48846.

s/Tammy Hallwood
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